

# **EXHIBIT Q**

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CAUSE NO. GV002327

THE STATE OF TEXAS ) IN THE DISTRICT COURT  
EX REL. )  
VEN-A-CARE OF THE )  
FLORIDA KEYS, INC. )  
 )  
PLAINTIFFS, )  
 )  
VS. ) TRAVIS COUNTY, TEXAS  
 )  
DEY, INC.; ROXANE )  
LABORATORIES, INC. AND )  
WARRICK PHARMACEUTICALS )  
CORPORATION, )  
 )  
DEFENDANTS. ) 53RD JUDICIAL DISTRICT

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ORAL AND VIDEOTAPED DEPOSITION OF  
TERRY MARK JONES  
OCTOBER 8, 2002

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ORAL AND VIDEOTAPED DEPOSITION OF  
TERRY MARK JONES, PRODUCED AS A WITNESS AT THE  
INSTANCE OF THE DEFENDANT DEY, INC., AND DULY SWORN,  
WAS TAKEN IN THE ABOVE-STYLED AND NUMBERED CAUSE ON  
THE 8TH OF OCTOBER, 2002, FROM 9:22 A.M. TO 4:21 P.M.,  
BEFORE DEBRA L. SIETSMA, CSR IN AND FOR THE STATE  
OF TEXAS, REPORTED BY MACHINE SHORTHAND, AT  
300 WEST 15TH STREET, 9TH FLOOR, PURSUANT TO THE  
TEXAS RULES OF CIVIL PROCEDURE AND THE PROVISIONS  
AS PREVIOUSLY SET FORTH.

Mark Jones 10-8-2002

1 Q. AND -- AND GIVE ME AN EXAMPLE, JUST AN  
2 EXAMPLE OF HOW THAT -- OF HOW YOU DO THAT. GIVE --

3 A. IF YOU ORDER A DRUG AND THE PRICES -- THE  
4 PRICE ON THE INVOICE -- OR YOU GET A CATALOG WHERE THE  
5 PRICE IS SET AT SOME PRICE AND YOU GO TO REDBOOK AND  
6 YOU LOOK AT THE REIMBURSEMENT PRICE, AND THAT'S HOW  
7 YOU COMPARE IT.

8 Q. JUST COMPARE THE TWO?

9 A. SURE.

10 Q. AND WHATEVER THE DIFFERENCE IS IS -- IS -- IS  
11 WHAT? IS THAT --

12 A. WELL, I THINK --

13 Q. THAT'S -- THAT'S THE DIFFERENCE?

14 A. THAT WOULD BE THE SPREAD, THE DIFFERENCE  
15 BETWEEN WHAT YOU ACQUIRE THE DRUG FOR AND WHAT YOU'RE  
16 ABLE TO RECEIVE REIMBURSEMENT FOR.

17 Q. WHEN DID YOU FIRST BEGIN NOTICING THIS SPREAD  
18 THAT YOU JUST DESCRIBED EXISTING AS A FACTOR IN  
19 INDUSTRY SALES OF GENERIC PRODUCTS?

20 MR. BREEN: OBJECTION TO FORM.

21 Q. (BY MR. FLECKMAN) WHEN DID THIS FIRST COME  
22 TO YOUR ATTENTION?

23 A. THE WAY IT FIRST CAME TO MY ATTENTION WAS  
24 BEFORE WE FILED THE NMC CASE, WHILE WE WERE IN THE  
25 MIDDLE OF LITIGATION WITH IMMUNE CARE. WE -- WE

1 QUESTIONED THE TPN ISSUE THAT WAS A PART -- TOTAL  
2 PARENTERAL NUTRITION WAS A PART OF THE PACKAGE THAT  
3 IMMUNE CARE WAS OFFERING. AND WE EVALUATED THE  
4 COMPONENTS OF THE TPN AND LOOKED AT THE AWP, AND THE  
5 COMPONENT PRICES WERE SIGNIFICANTLY LESS THAN WHAT THE  
6 AWP COLLECTIVELY ADDED UP TO, AND WE FELT LIKE THAT  
7 WAS WHERE -- THAT -- THAT WAS WHERE -- A SPREAD IN  
8 THAT PARTICULAR COMPOUND OF DRUG.

9 Q. OKAY.

10 A. WHEN WE WERE RUNNING VEN-A-CARE EARLY ON, WE  
11 WERE AN HIV -- I MEAN BASICALLY MOST OF OUR -- OUR  
12 PATIENTS WERE HIV, AND MOST OF THE DRUGS THAT WE DEALT  
13 WITH WERE BRANDED DRUGS, SO SPREADS WEREN'T AN ISSUE.  
14 IF A PATIENT WAS ON CYTOVENE OR PATIENTS WERE ON  
15 PENTAMIDINE -- SOME PATIENTS WERE ON CERTAIN  
16 CHEMOTHERAPY DRUGS THAT WERE STILL UNDER PATENT. YOU  
17 KNOW, THE PRICE THAT WE GOT QUOTED WAS THE PRICE WE  
18 PAID, WAS THE PRICE THAT WE WERE REIMBURSED FOR.  
19 WE WATCHED IT EVOLVE. I THINK ONE OF  
20 THE FIRST TIMES WE SAW IT EVOLVE WAS -- WAS WITH AN --  
21 AN IVIG, IMMUNOGLOBULIN CASE, AND ZACK HAD HAD SOME  
22 EXPERIENCE. I DON'T PARTICULARLY REMEMBER THE TERMS  
23 OF HIS EXPERIENCE WITH LEUCOVORIN, IV KIND OF  
24 CHEMOTHERAPY ADJUNCT CASE, WHICH HAD A SIGNIFICANT  
25 SPREAD ON IT AND I -- I THINK IT WAS PROBABLY 18 OR

1     \$20 PER DOSE.

2     THE IVIG CASE, THE -- I THINK THAT WE

3     LAID IT OUT SOMEWHERE -- I WAS ALSO SOLICITED BY A

4     REPRESENTATIVE WANTING TO KNOW WHERE I WAS -- ACTUALLY

5     LET ME BACK UP AND TELL YOU THE -- THE STORY.

6     WE WERE BUYING GAMMAR FROM ARMOUR TO

7     ADMINISTER TO A GUILLAIN-BARRE PATIENT. IT WAS

8     150 GRAMS A MONTH. APPARENTLY, ARMOUR HAD A LIMITED

9     SELECTION OF GAMMAR, BECAUSE THEY WERE SWITCHING THE

10    WAY THEY MANUFACTURED IT FROM A HEAT-TREATED PROCESS

11    TO A SOLVENT DETERGENT PROCESS, AND THIS WAS IN

12    RESPONSE TO THE CONTAMINATED BLOOD SUPPLIES FROM THE

13    HIV EPIDEMIC. SO THE REP REFERRED ME TO A SPECIALTY

14    WHOLESALE CALLED FFF IN ORDER TO BUY WHAT LITTLE

15    ALLOTMENT WAS LEFT OF THE GAMMAR. AND AFTER ABOUT A

16    MONTH OR TWO, THEY HAD RUN OUT OF THE EXISTING ARMOUR

17    BRAND OF IVIG.

18    SO THE SALES REP THAT WAS WORKING AT FFF

19    GAVE ME PRICES FOR ANOTHER IVIG PRODUCT PRODUCED BY

20    AMERICAN RED CROSS CALLED POLYGAM, AND IT JUST SO

21    HAPPENED THAT IT WAS ABOUT THREE OR FOUR DOLLARS

22    CHEAPER ON -- ON THE FRONT END. SO BECAUSE GAMMAR WAS

23    GONE AND BECAUSE POLYGAM WAS AVAILABLE AND BECAUSE THE

24    PRICE WAS CHEAPER, WE STARTED ORDERING IT.

25    WELL, WE GOT INTO A RELATIONSHIP OF

1 ORDERING THE POLYGAM; AND THIS PATIENT WAS GETTING  
2 150 GRAMS A MONTH. AND, APPARENTLY, WHEN ARMOUR  
3 STARTED RESTOCKING THEIR SUPPLY, WHEN THEY GOT THROUGH  
4 THE MANUFACTURING PROCESS, FRANCIE CALLED ME UP AND  
5 SAID, "I LOOKED AT FFF" -- APPARENTLY SHE WAS ABLE TO  
6 TRACK WHAT MY PURCHASING, YOU KNOW, HISTORY WAS --  
7 "AND I NOTICE THAT YOU STARTED USING POLYGAM."  
8 I SAID, "YEAH. WELL, YOU KNOW, YOU WERE  
9 OUT OF GAMMAR."  
10 SHE GOES, "WELL, YOU -- YOU SHOULDN'T BE  
11 USING POLYGAM BECAUSE, IF YOU LOOK AT ARMOUR'S PRICE,  
12 ARMOUR'S PRICE HAS A 50-DOLLAR MORE SPREAD ON THE END  
13 OF IT."  
14 I'M LIKE, "WELL, WHAT ARE YOU TALKING  
15 ABOUT?"  
16 SHE GOES, "WELL, IT MAY COST YOU A  
17 COUPLE DOLLARS -- COUPLE, FEW DOLLARS MORE ON THE  
18 FRONT END BUT, WHEN YOU ARE REIMBURSED, THE END RESULT  
19 IS A MUCH LARGER SPREAD, A MUCH LARGER PROFIT MARGIN."  
20 AND IT DIDN'T REALLY MATTER ANYWAY. THIS WAS A  
21 WORKMEN'S COMP PATIENT THAT ZACK HAD NEGOTIATED PRICES  
22 FOR ACROSS THE BOARD. SO I MEAN WE WEREN'T -- WE --  
23 WE WERE BUYING IT FOR THE FRONT END TO BUY IT AS  
24 CHEAPLY AS POSSIBLE SO THAT, YOU KNOW, WHATEVER  
25 NEGOTIATED PRICE IT WAS -- AND I DON'T RECALL WHAT IT

1 WAS -- WAS WHAT -- THE PROFIT THAT WE MADE OFF OF IT.  
2 SHE ASSUMED THAT IT WAS A MEDICAID PATIENT OR MEDICARE  
3 PATIENT WHERE THE INCREASED REIMBURSEMENT -- WHAT --  
4 WHAT THEY HAD SAID WAS THE -- WAS -- WHAT THEY SAID  
5 WAS THE AWP WOULD AFFECT MY SPREAD. THAT WAS A  
6 REAL -- YOU KNOW, A TIME WHERE IT STARTED TO REALLY  
7 COME CLEAR THAT THEY WERE STARTING TO MARKET IT.  
8 BEFORE THAT, THE OTHER INSTANCE WHERE WE  
9 RAN INTO IT WAS WITH PULMADOSE AND PROSCRIPT, AND THAT  
10 WAS MORE IN '95, LIKE SEPTEMBER SOMEWHERE IN '95,  
11 WHERE THE -- I KNOW. I GUESS THEY WERE SPECIALTY  
12 RESPIRATORY DEALERS. THEY HAD CONTACTED ZACK AND  
13 MYSELF, WANTING US TO GET INTO AN ARRANGEMENT WITH  
14 THEM OF SUPPLYING -- I THINK IT WAS -- WELL, IT WAS  
15 ALBUTEROL AND A NUMBER OF OTHER INHALANT SOLUTIONS --  
16 TO PATIENTS IN THE KEY WEST COMMUNITY.  
17 AND THEY CONTACTED CRITICARE, BECAUSE  
18 CRITICARE WAS A HOME HEALTH AGENCY. AND THE DEAL WAS  
19 IS THAT PROSCRIPT WOULD PROVIDE THE DRUG AT A CERTAIN  
20 COST TO US, WE COULD BILL MEDICARE AND MEDICAID, AND  
21 THE PROFIT MARGIN, THE SPREAD ON THE DRUG, WAS SPLIT.  
22 AND THEN PROSCRIPT WAS ANOTHER ONE -- AND I DON'T KNOW  
23 THAT I HAD ANY CONVERSATIONS WITH PROSCRIPT, BUT  
24 PROSCRIPT OFFERED YOU REFERRAL FEES AND FINDER'S FEES  
25 AND FOLLOW-UP FEES. SO WE WERE STARTING TO REALLY

1 UNDERSTAND, YOU KNOW, THE NATURE OF THE SPREAD GAME.  
2 SO WE IMMEDIATELY -- BECAUSE WE WERE IN  
3 DIALOGUES WITH THE OIG, WITH -- WITH DOJ. WE WERE IN  
4 DIALOGUES WITH THEM THROUGH OUR FILING OF THE NMC CASE  
5 IN JUNE, AND WE HAD BEEN IN DIALOGUE WITH THEM  
6 BEFORE -- AND I SHOULD BACKTRACK FOR YOU.  
7 BEFORE WE -- FIRST OF ALL, WE TURNED ALL  
8 THE PULMADOSE STUFF OVER AND SAID, "LOOK, THIS IS  
9 WHAT'S HAPPENING IN THE INHALATION," AND WE TURNED IT  
10 OVER -- THE IVIG TO THEM, BUT WE WERE ALSO INVOLVED  
11 WITH MARITZA PENNISTON, WHO WAS FROM JACKSONVILLE, OUT  
12 OF THE -- I THINK IT'S THE OFFICE OF AUDIT FOR THE  
13 OIG. SHE HAD CONTACTED US AND HAD US PRICE OUT  
14 PARENTERAL FORMULAS, PARENTERAL FORMULAS THAT SHE HAD  
15 TAKEN OUT OF WHAT'S CALLED A STANDARD MERCK FORMULA  
16 SO -- BECAUSE THE OIG WAS TRYING TO INVESTIGATE OR  
17 LOOKING AT PRICING IN THE PARENTERAL NUTRITION ARENA.  
18 SO WE -- WE'D HAD THAT DIALOGUE.  
19 WE'D -- WE'D STARTED, YOU KNOW, TALKING TO THE -- TO  
20 THE GOVERNMENT FOLKS ABOUT IT. AND THEN IN '95  
21 AND '96 WE STARTED TURNING OVER ALL THE INFORMATION  
22 THAT WE GOT WHEN ANYONE WAS TRYING TO -- TO MARKET US  
23 WITH THE SPREAD.  
24 MR. FLECKMAN: OKAY. I'M -- I'M GOING  
25 TO HAVE TO OBJECT AS NONRESPONSIVE.